

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  NEW EDGE NETWORK, INC., d/b/a NEW EDGE NETWORKS	DOCKET NO. TCU-99-35
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**ORDER WITHDRAWING APPROVAL OF APPLICATION**

(Issued November 25, 2003)

On October 11, 1999, New Edge Network, Inc., d/b/a New Edge Networks (New Edge), filed with the Utilities Board (Board) an application for a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29 (1999). The Board identified New Edge's application as Docket No. TCU-99-35. On December 6, 1999, the Board issued an order approving New Edge's application. In that order, the Board stated that a certificate would be granted to New Edge upon the filing of approved tariffs and maps.

On August 7, 2003, the Board issued a "Notice of Cancellation of Certificates and Rejection of Tariffs" which identified 37 competitive local exchange carriers that have approved applications for certificates on file with the Board, but have never filed the tariffs or maps required to actually obtain a certificate. New Edge was included in the Board's list of carriers with approved applications but lacking certificates.

On September 2, 2003, New Edge filed a response to the Board's August 7, 2003, notice, stating that while New Edge originally intended to provide local exchange services and then expand its business plan to include local and long

distance services, it currently is offering only high speed broadband services and has not yet begun to provide local exchange service in Iowa. New Edge requests that the Board grant a continuation of its TCU status so that it may continue to purchase unbundled network elements (UNEs) through its existing interconnection agreements.

Pursuant to Iowa Code § 476.29, a “utility must have a certificate of public convenience and necessity issued by the board before furnishing land-line local telephone service in this state.” For purposes of § 476.29, a “utility” is defined as “any person . . . furnishing communications services to the public for compensation.” See § 476.1.

Based on the information in New Edge’s response filing, the services New Edge is currently offering are not the type of services intended to be regulated under Iowa Code chapter 476. New Edge’s services do not amount to (or substitute for) regular dial-tone services, the traditional focus of the Board’s telecommunications regulation. Therefore, based upon the information in New Edge’s response filing, the Board finds that New Edge is not offering services that cause it to be a “utility” for purposes of § 476.29. Accordingly, the Board will withdraw its approval of New Edge’s application, without prejudice to re-filing if New Edge proposes in the future to furnish services regulated by the Board.

In order to provide its high-speed broadband services, New Edge states that it requires interconnection agreements with other local exchange service providers. While New Edge’s current service offerings do not qualify for certification under the Board’s rules, based on the information in New Edge’s response filing, New Edge

appears to be a "telecommunications carrier" as defined in 47 U.S.C. § 153(44) and therefore is entitled to all rights enjoyed by telecommunications carriers under 47 U.S.C. § 251. On this basis, New Edge may enter into interconnection, collocation, and resale agreements with local exchange carriers pursuant to 47 U.S.C. § 251, and the Board's withdrawal of New Edge's approved application should not adversely affect New Edge's ability to do so.

Because New Edge is a telecommunications carrier under the federal statute, it is also necessary that New Edge register with the Board pursuant to 199 IAC 22.23(3). New Edge should do so immediately upon issuance of this order.

**IT IS THEREFORE ORDERED:**

The Board's approval issued on December 6, 1999, for the application for certificate of public convenience and necessity filed on October 11, 1999, by New Edge Network, Inc., d/b/a New Edge Networks, and identified as Docket No. TCU-99-35 is withdrawn and the application is denied, without prejudice, as described in this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 25<sup>th</sup> day of November, 2003.